IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5256 of 1995
With
CRIMINAL MISC.APPLICATION No. 5257 of 1995
To
CRIMINAL MISC.APPLICATION No. 5259 of 1995
With
CRIMINAL MISC.APPLICATION No. 4893 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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SHRENIKBHAI KASTURIBHAI SHETH & 1 - Applicant(s)
Versus
D.N. CHAWADA & 1 - Respondent(s)

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Appearance :
MS KJ BRAHMBHATT for Applicant(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1,
MR PD BHATE Addl Public Prosecutor for Respondent No.2-State.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 03/10/2006

ORAL JUDGMENT

1. The petitioners have approached this Court and orally invoked the powers of this Court under Articles 226 and 227 of the Constitution as also section 482 of the Code of Criminal procedure, 1973 for setting aside the criminal complaints filed against them by the Government Labour Inspector for the alleged offence under the provisions of Section 22-A of the Minimum Wages Act, 1948 ('the Act' for short). It is clearly stated in the complaints themselves that the cause for complaint had arisen on 17.5.1994 when the establishment of the petitioner was visited and the alleged default had come to the notice of the Government Labour Inspector. It is also stated in the complaints themselves that the complaints were, though dated 19.1.1995, filed within the period of limitation prescribed by the provisions of section 22-B of the Act.

2. Learned counsel Ms.Brahmbhatt argued that the provisions of section 22-B, as amended by the Minimum Wages (Gujarat Amendment) Act, 1961, read as under:

> ***"S.22-B Cognizance of offence***:
>
> *(1) ... ...*
>
> *(2) No court shall take cognizance of an offence:-*
>
> *(a) ... ...*
>
> *(b) Under section 22-A, unless the complaint thereof is made within six months of the date on which the offence becomes known to the Inspector".*

Therefore, the complaints were obviously barred by the provisions of limitation, according to the submission.

3. The learned A.P.P., appearing for the respondent, could not dispute the factual position emerging from the record that the alleged offence had become known to the Inspector on 17.5.1994 and the complaints in question filed on 19.1.1995 were obviously barred since the period of six months had already elapsed before the complaints were filed.

4. In view of the above clear factual and legal position and the bar against taking of cognizance, it was not permissible for the trial court to take cognizance and issue summons for trial of the alleged offence. Therefore, the petitions are allowed and the Criminal Complaints No.8941, 8942, 8945, 8946, 8939, 8940, 8943, 8944, 9131 and 9132 of 1995 pending in the court of the learned Metropolitan Magistrate, Ahmedabad are quashed. Rule is made absolute in each of the petitions with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)